

Ethics Desk Reference

**USDA, REE
Human Resources Division
Employee Relations Branch
Ethics Office**

Rev. 8/99

SOME NOTES ABOUT THIS GUIDE

Our goal in issuing this publication is to increase your awareness of ethics-related situations that could occur during your Federal career. The publication was created as a step-by-step guide of procedures addressing situations such as what to do if subpoenaed to testify in a civil suit; rights and prohibitions for lobbying; outside employment; post-employment prohibitions; suggestions to avoid ethics problems; and more. Whether you hold a managerial, supervisory, or non-supervisory position, you are invited to browse through this overview and to use it as a desk reference. Only the most frequently questioned topics are addressed here, so please don't hesitate to contact your Ethics Advisor with additional questions.

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CRITERIA FOR DESIGNATING POSITIONS/FUNCTIONS FOR CONFIDENTIAL FINANCIAL DISCLOSURE

Background Financial disclosure is established as a mechanism to safeguard employees and their agencies. Through disclosure potential conflicts of interest are identified and avoided at an early stage. Generally, employees identified for disclosure have duties that are likely to affect non-Government entities. Identification of these employees is made by grade, duties and responsibilities outlined in a position description, or by special assignment/appointment.

Definition SPECIAL GOVERNMENT EMPLOYEE (Collaborators, Consultants, and Panel Members): an employee appointed to serve no more than 130 days in a period of 365 days with or without pay.

Abbreviations

ADODR - Authorized Departmental Officer's Designated Representative

CFR - Code of Federal Regulations

CO - Contracting Officer

COR - Contracting Officer's Representative

COTR - Contracting Officer's Technical Representative

Coverage The following chart contains criteria for identification of required filers.

EMPLOYEES WHO MUST FILE	CRITERIA	REASON FOR FILING
Employees paid 120% of the GS-15 pay rate	Based on level of authority for action taken on behalf of the Government.	Required by the Ethics in Government Act.
Certain employees paid at or below GS-15	File when activities involve making personal and substantial decisions or using significant judgment related to actions listed in the next column.	Employees involved with: <ul style="list-style-type: none">c contracting or procurement; (See Special Note on page 2.)c administering or monitoring grants, subsidies, licenses or other benefits (includes ADODR appointments);c regulating or auditing any non-Federal entity; orc performing other activities having a direct and substantial economic effect on a non-Federal entity.
Collaborators, Consultants, Panel Members and other Special Government Employees	All must file with each new appointment and reappointment.	5 CFR 2634.904 requirement.

CRITERIA FOR DESIGNATING POSITIONS/FUNCTIONS FOR CONFIDENTIAL FINANCIAL DISCLOSURE (Continued)

Volunteers Volunteers are not required to file either the Public or Confidential Financial Disclosure Report.

Authority to Direct Disclosure & Form Required Authority to order disclosure is limited to two offices. Employees are required to file as follows:

EMPLOYEE	OFFICER AUTHORIZED TO ORDER DISCLOSURE	FORM
Above GS-15 pay equivalent Employees with Schedule C appointments (political employees serving as special/confidential assistants) Collaborators, Consultants, Panel Members and other Special Government Employees paid 120% above the GS-15 rate	Alternate Agency Ethics Official, USDA Office of Ethics	AD-278, Public Financial Disclosure Report
GS-15 and below or equivalent	Chief of the Employee Relations Branch, Human Resources Division	OGE Form 450, Confidential Financial Disclosure Report
Unpaid Collaborators, Consultants, Panel Members and other Special Government Employees paid below GS-15 pay equivalent	Chief of the Employee Relations Branch, Human Resources Division	OGE Form 450, Confidential Financial Disclosure Report

Improper Determination Employees who believe they have been improperly identified for Financial Disclosure should formally request a review of their duties by their individual Ethics Advisor. A copy of the current position description must be included with the request for review.

Special Note Only those REE Purchase Card Holders with purchase authority exceeding \$25,000/month are required to file. All ARS and certain CSREES employees **graded GS-13 and above** who serve as Contracting Officer's Representatives/ Technical Representatives (CORs/COTRs) must file yearly reports. CSREES, ERS, and NASS employees required to file will be advised by their Ethics Advisor. All other REE Purchase Card Holders and CORs/COTRs **graded below GS-13** need not file.

GIFT EXCHANGE - EXTERNAL

Background During the year, especially during the fall and winter holiday season, individuals and companies who do business with the Department of Agriculture (USDA) often send or offer unsolicited gifts to employees.

Prohibition Overall, the Standards of Ethical Conduct prohibit an employee from soliciting or accepting gifts from individuals and/or organizations doing business, or seeking to do business, with USDA. The acceptance of gifts given because of employee's official position is also prohibited.

Definitions GIFT: any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value.

PROHIBITED SOURCE means any person/organization (a majority of whose members are):

- c Seeking official action by USDA;
 - c Conducting business or seeking to do business with USDA;
 - c Conducting activities regulated by USDA; or
 - c Having interests that may be substantially affected by the performance or nonperformance of the employee's official duties.
-

Exclusions Gifts do not include:

- c Coffee, donuts and similar modest items of food and refreshments when offered other than as part of a meal;
- c Greeting cards and most plaques, certificates and trophies;
- c Prizes in contests open to the public;
- c Commercial discounts available to the general public or to all Government or military personnel;
- c Commercial loans, and pensions and similar benefits;
- c Anything paid for by the Government, secured by the Government under Government contract or accepted by the Government in accordance with a statute; or
- c Anything for which the employee pays market value.

GIFT EXCHANGE - EXTERNAL (Continued)

Disposition of Gifts Received

When a gift cannot be accepted, the employee can:

- c Pay the donor the market value of the gift;
- c Return the gift with a polite declination; or

If a perishable item, the employee may obtain approval from their Ethics Advisor to:

- c Donate the gift to a charity;
- c Destroy; or
- c Share the gift within the office.

Exceptions

There are eleven exceptions to the prohibition for receiving gifts from entities seeking to do business with USDA. Employees may accept:

NUMBER	EXCEPTION
1	Gifts with a market value of \$20 or less per occasion provided that the aggregate market value of individual gifts received from any one person/organization does not exceed \$50 in a calendar year. Cash may not be accepted as a gift. Cash may only be accepted in connection with awards. (See Special Note on next page.)
2	Gifts clearly motivated by a family relationship or personal friendship.
3	Commercial discounts and similar benefits offered to groups in which membership is not related to Government employment, or if membership is related to Government employment, where the same offer is broadly available to the public through similar groups or by persons who are not prohibited sources.
4	Certain awards and honorary degrees (see Special Note on next page).
5	Gifts resulting from the outside business activities of employees and their spouses.
6	Travel and entertainment in connection with employment discussions.
7	Free attendance provided by the sponsor of an event for the day on which an employee is speaking or presenting information at the event.
8	Free attendance provided by the sponsor of a widely attended gathering of mutual interest to a number of parties where the necessary determination of agency interest has been made.
9	Invitations to social events extended by persons who are not prohibited sources, provided no one is charged a fee to attend the event.
10	Certain gifts of food and entertainment in foreign areas (see the Standards of Ethical Conduct, Section 2635.204(i), Meals, Refreshments, and Entertainment in Foreign Areas).
11	Gifts accepted by the employee under a specific statute, or pursuant to a supplemental agency regulation.

GIFT EXCHANGE - EXTERNAL (Continued)

**Special
Note**

All external awards of cash and gifts with an aggregate market value greater than \$225 may be accepted only after a written determination is made by the Agency Ethics Advisor.

GIFT EXCHANGE - INTERNAL

Background During the year, especially during the fall and winter holiday season, employees enjoy exchanging gifts among themselves.

General Prohibition The Standards of Ethical Conduct prohibit employees from giving or soliciting for gifts to supervisors or accepting gifts from lower-paid employees, unless the individuals are personal friends who are not in a superior-subordinate relationship.

Definitions GIFT: any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value.

OFFICIAL SUPERIOR: anyone whose official responsibilities involve directing or evaluating the performance of the employee's official duties. The term is not limited to immediate supervisors, but applies to officials up the supervisory chain.

SOLICIT: to request contributions by personal communication or by general announcement.

VOLUNTARY CONTRIBUTION: a contribution (of an amount determined by the contributing employee) except in instances where the employee freely chooses to pay a proportionate share of the cost of a luncheon, reception, or similar event. Regardless, voluntary contributions are given freely and without coercion.

Exceptions Giving and receiving gifts between employees is allowable as follows:

NUMBER	EXCEPTION
1	Items, other than cash, aggregating \$10 or less per occasion.
2	Food and refreshments shared in the office.
3	Personal hospitality at a residence.
4	Appropriate hostess gifts.
5	Leave sharing under Office of Personnel Management Regulations.
6	Gifts given in recognition of infrequently occurring occasions of personal significance such as marriage, illness, or the birth or adoption of a child; or upon occasions that terminate a subordinate-official superior relationship such as retirement, resignation, or transfer. In these instances, an employee may solicit voluntary contributions of nominal amounts from fellow employees for an appropriate gift to an official superior, and an employee may make a voluntary contribution.

LOBBYING

Background	<p>From time to time employees wish to engage in lobbying activities. While Title 5, Subchapter II, Section 7211, gives employees the right to lobby as private citizens, Title 18, Section 1913, prohibits the use of Government time or resources to do so. Congress created the Title 18 prohibition to prevent the use of appropriated funds to circumvent its decisions by influencing constituents and voters.</p>
Definitions	<p><u>LOBBYING</u>: attempting to influence legislators.</p> <p><u>DIRECT LOBBYING</u>: calling or writing a member of Congress (or congressional staff).</p> <p><u>GRASS ROOTS LOBBYING</u>: contacting members of interest groups or the public and urging them to call or write their Members of Congress.</p> <p>Grass roots lobbying can appear as a:</p> <ul style="list-style-type: none">c speechc press releasec publicationc report <p>Its identifying characteristic is the explicit or implicit message: "write or visit your Member of Congress."</p>
Basic Rule	<p>Direct or grass roots lobbying on an employee's own time carries no legal penalties.</p> <p>Lobbying on Government time and/or using Government resources is prohibited.</p> <p>Use of Government appropriated funds for lobbying is prohibited by law.</p>
Penalties	<p>Using Government appropriated funds for "grass roots" and direct lobbying is a crime punishable by fines, incarceration, and administrative penalties.</p>
References for Procedures	<p>For procedures to follow when speaking to congressional staff in the course of official duties, refer to the following Policies and Procedures (Directives):</p> <ul style="list-style-type: none">c Policy and Procedure (Directive) 125.1, Legislative Programs, Reports, and Testimony; andc Policy and Procedure (Directive) 125.3, Documenting Official Congressional Conversations.
Contacts for Additional Information	<p>If you have any general questions with regard to lobbying activities, call your Agency Ethics Advisor identified at the front of this guide. For questions relating to guidelines on congressional testimony, contact the REE Legislative Affairs Office on 202-720-4465.</p>

OUTSIDE ACTIVITY/EMPLOYMENT

Background

On March, 24, 2000, the U.S. Department of Agriculture published an interim rule in the Federal Register that requires all employees who file a public or confidential financial disclosure report to seek and obtain prior approval to engage in outside employment and activities. The requirement does not prevent employees from seeking outside employment, but helps to prevent employees from getting themselves into situations where it might be perceived by a reasonable person that a conflict may exist.

Until the USDA Office of Ethics develops a form, employees must use form ARS-101a, "Application for Approval to Engage in Non-Federal Employment or Activity." This form can be found on the REE Ethics Website forms page at the following: www.ars.usda.gov/afm/hrd/hrdhomepage/ethics/ethicsforms.htm. Approval by the immediate supervisor and appropriate ethics advisor will be based on an assessment that the employment generally does not appear to violate any criminal statutes or other administrative regulations pertaining to ethics. It is not a determination that a criminal or ethical conflict could not arise.

All REE employees considering outside employment should carefully review and be familiar with the provisions of the Standards of Ethical Conduct (5 CFR, Subpart H, §§ 2635.801 - 807) and USDA Bulletin 735-1, Employee Responsibilities and Conduct.

Purpose

This guide contains general criteria for the consideration of potential conflicts between official duties and outside work.

Definitions

CONFLICT OF INTEREST: a situation in which an employee's official actions or duties could affect his/her private interests.

FARMING: any activity outside Federal employment, the purpose of which is to produce agricultural goods or commodities for sale.

FOREIGN EMPLOYMENT: Any personally negotiated work with an organization whose headquarters are located outside the United States. Foreign employment also includes work with a foreign government, the political subdivision of a foreign government, including a public university or commercial enterprise owned or operated by a foreign government. (See "Foreign Employment" prohibitions section.)

HONORARIUM: payment of money or anything of value for services rendered.

LOSS OF IMPARTIALITY: a situation where the circumstances could lead a reasonable person to question an employee's ability to act fairly on an official matter even though an actual conflict of interest does not exist.

OUTSIDE ACTIVITY/EMPLOYMENT: Any non-Federal work, service, or activity performed by an employee other than in the performance of official duties. These situations include, but are not limited to, such activities as writing, editing, publishing, teaching, lecturing, consulting services, self-employment, working for another employer, management or operation of a private business, personally owned business, partnership, corporation, or any work performed with or without compensation.

OUTSIDE ACTIVITY/EMPLOYMENT (Continued)

Definitions PROHIBITED SOURCE: any person/organization (a majority of whose members are):

- c Seeking official action by USDA;
 - c Conducting business or seeking to do business with USDA;
 - c Conducting activities regulated by USDA; or
 - c Having interests that may be substantially affected by performance or nonperformance of the employee's official duties.
-

**Examples of
Outside Work
Carrying the
Potential for a
Conflict of Interest**

Below is a list of activities/employment where a conflict of interest could occur:

- Adjunct and full professor appointments
 - Officer positions in professional associations
 - Writing, editing, publishing
 - Teaching, lecturing
 - Consulting services
 - Self-employment
 - Working for another employer
 - Management or operation of a private business, partnership or corporation
 - Farming (see additional requirements in "Farming" section)
-

**Examples of Work
That are Unlikely
to Create a Conflict
of Interest**

Below is a list of activities where a conflict of interest is unlikely to exist:

- Membership in or volunteer work with:
 - charitable, religious
 - social, fraternal
 - recreational
 - public service, civic
 - similar nonbusiness and nonprofit organizations
- Membership in professional organizations
- Performance of duties in the:
 - Armed Forces
 - Reserve
 - National Guard
- Labor organization activities

Special Note: Except in very limited instances, employees are prohibited from representing non-Federal entities back to the Federal Government. (See "Criminal Prohibitions" section.)

**Criteria for
Consideration of
Outside Work**

Any employee about to engage in an outside employment/activity should use the following criteria to determine whether or not their outside work will create a conflict of interest or the appearance of favoritism (loss of impartiality).

OUTSIDE ACTIVITY/EMPLOYMENT (Continued)

NUMBER	CRITERIA
1	<p>Considering the mission and duties of your official work and your intended outside work, review the following questions. If you answer “yes” to any of these questions, discuss the outside work with your Ethics Advisor.</p> <ul style="list-style-type: none"> c Are you engaged in Government work that involves/affects the prospective employer? c Does your prospective employer do business with/work with the agency? c Will your work with the outside employer involve work they are doing for/with the Government (e.g. cooperative agreements/grants, etc.) c Are you expected to use official unpublished research or confidential information? c Are you expected to negotiate matters on behalf of your prospective employer back to the Federal Government? c Are you considering employment with a foreign government? c Do you wish to engage in foreign employment while officially serving abroad? <p><u>Special Note:</u> If foreign work is contemplated, see “Foreign Employment Prohibitions” in this guide.</p>
2	<p>Overall, do you have enough information about the outside work to ensure adequate defense against a potential accusation of a conflict of interest?</p> <p>REMEMBER, YOU ARE PERSONALLY ACCOUNTABLE FOR ENSURING THAT YOUR ACTIVITIES COMPLY WITH THE ETHICS LAWS AND REGULATIONS.</p>

Criminal Prohibitions

Overall, ethics rules are traceable to criminal prohibitions found in Title 18 of the United States Code. Violations of Title 18 carry potential fines, imprisonment, or both for all employees regardless of their title, series, or grade. Sections of Title 18 applicable throughout Federal employment follow:

CITATION	PROHIBITION
18 U.S.C. 201 (Bribery)	Offering, giving, accepting, or requesting something of value to influence an official act.
18 U.S.C. 203 (Compensated Representation)	Directly or indirectly demanding, seeking, receiving, accepting, or agreeing, to receive compensation (honoraria) for representational services related to any matter in which the United States is a party or has a direct and substantial interest.
18 U.S.C. 205 (Uncompensated Representation)	Acting as agent or attorney for anyone before the Government in any matter in which the United States is a party or has a direct and substantial interest.

OUTSIDE ACTIVITY/EMPLOYMENT (Continued)

CITATION	PROHIBITION
18 U.S.C. 208 (Conflict of Interest)	Participating in a particular matter affecting the financial interest of: <ul style="list-style-type: none"> c The employee or the employee's immediate family members; c A non-Federal source for which the employee serves as officer, director, or employee; or c A non-Federal sources with which the employee is negotiating for employment or has an arrangement regarding future employment.
18 U.S.C. 209 (Dual Compensation)	Receiving salary/compensation for official duties from a non-Federal source.

Farming

Basically, all REE employees may engage in farming activities. However, given the overall mission of USDA, employees must remain sensitive to avoiding even a perception of impropriety while engaging in farming activities.

USDA employees may not actively participate in meetings and functions concerned with the establishment of farm organizations or with recruiting members for existing organizations. (See Department of Agriculture, Human Resources Management, Employee Responsibilities and Conduct Bulletin: 735-1 for specifics of the prohibition.)

Following procedures established for the general public, REE employees may participate in any Department farm program.

Foreign Employment Prohibitions

Occasionally, some employees are invited to work for a foreign entity. Employees considering foreign employment should be aware of the following prohibitions:

Emoluments Clause of the Constitution of the United States - Prohibits employees from accepting any outside employment with a foreign government or the political subdivision of a foreign government, including a public university or commercial enterprise owned or operated by a foreign government. The ban does not apply to a foreign privately owned corporation or an international organization.

Foreign Gifts and Decorations Act (5 USC 7342) - Prohibits employees from accepting a gift exceeding \$245 in value from a foreign government or an international organization whose membership is composed of any unit of foreign government. A prohibited gift even includes travel expenses exceeding \$245 in value unless the travel takes place entirely outside the United States. The restriction extends to the spouse and dependents of the employee. The Agency can, however, accept travel and related expenses from a foreign government as part of U.S. Government duties on behalf of the employee.

OUTSIDE ACTIVITY/EMPLOYMENT (Continued)

Foreign Employment Prohibitions (Continued)

Foreign Agents (18 USC 219) - Prohibits an employee from acting as an agent of a foreign principal registered under the Foreign Agents Registration Act unless the head of the agency certifies that the employment is in the national interest.

Department of Agriculture, Human Resources Management, Employee Responsibilities and Conduct Bulletin: 735-1, Section 207(e) -

Prohibits employees who are serving abroad from having an interest in any business enterprise or engaging in any profession in any country to which assigned.

Use of Government Resources

The use of Government resources, including equipment and duty hours toward the accomplishment of outside work, is prohibited.

Contacts for Additional Information

For additional information, including assistance with determining whether or not your accomplishment of outside work could create a conflict of interest or raise concerns about a loss of impartiality in performing your official duties, call your Agency or Designated Area Ethics Advisor or the REE Ethics Office.

SEEKING EMPLOYMENT & POST-EMPLOYMENT RESTRICTIONS

Background

All separating employees are subject to certain post-employment restrictions. The following is a **brief overview** of restrictions faced by Agency employees.

Definitions

PARTICULAR MATTER (for individuals currently employed by the Government): work related to, or stemming from, the employee's Government job (i.e. any investigation, application, request for ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding).

PARTICULAR MATTER (for purposes of post-employment considerations): work related to, or stemming from, the former employee's Government job (i.e. any investigation, application, request for ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding involving a specific party).

PROCUREMENT-RELATED WORK: the official work of any present or former employee who, by virtue of his/her position, has or had access to contract bid or proposal information or source selection information.

REPRESENTATION: knowingly communicating with, or appearing before, a current employee of the United States, on behalf of another person/organization with the intent to influence the Federal employee's/agency's actions in a specific matter.

SEEKING EMPLOYMENT: to make arrangements for, settle, or conclude a transaction for non-Federal work. For questions regarding the parameters of commencing and terminating employment negotiation, see the Standards of Ethical Conduct, Sec. 2635.603, Definitions, or call your Ethics Advisor.

SENIOR PERSONNEL: employees paid at or above Executive Schedule Level V.

SUBSTANTIAL PARTICIPATION: personal and significant involvement with a particular matter involving the following processes: decision, approval, disapproval, recommendation, the rendering of advice, investigation, etc. Significant involvement requires more than official responsibility over a particular matter. (For determinations of substantial participation, call your Ethics Advisor.)

Seeking Future Employment Prohibition

Employees may not take official action on a particular matter affecting the financial interests of an organization with which they are seeking or have an arrangement for a job. (Employees should review the Standards of Ethical Conduct, Section 2635.604, Disqualification While Seeking Employment, prior to negotiating prospective employment with any organization dealt with in their official capacity.)

SEEKING EMPLOYMENT & POST-EMPLOYMENT RESTRICTIONS (Continued)

Restrictions After Leaving the Government

The following statutory prohibitions prevent Government employees from "switching sides" after leaving the Government.

LIFETIME BAN: prohibits an employee from representing anyone before the Government on a particular matter involving specific parties in which the employee participated personally and substantially while with the Government.

ONE-YEAR BAN: prohibits senior personnel (employees paid at or above Executive Schedule Level V) from making a communication with the intent to influence any office or employee of the Department on a Government matter.

TWO-YEAR BAN: prohibits an employee from representing another person on a particular matter involving specific parties which was pending under the employee's supervision/responsibility for the last year of the employee's Government service.

Procurement Related Restrictions

Separated employees are prohibited from participating on behalf of a contractor in negotiations that they participated in personally and substantially, or personally approved and reviewed for the Government as follows:

IF FEDERAL EMPLOYMENT ENDED:	THEN THE EMPLOYEE IS PROHIBITED FROM CONTRACT PARTICIPATION FOR A PERIOD OF:
before January 1, 1997	2 years
on or after January 1, 1997, and the contract is in excess of \$10,000,000	1 year

Penalties

A former employee who violates the post-employment restrictions is subject to the following penalties.

NUMBER	PENALTY
1	Imprisonment not to exceed 5 years/or a fine not to exceed \$50,000 for each violation, or the amount the person received for the prohibited conduct, whichever is greater.
2	Injunction prohibiting a former employee from engaging in conduct that violates the post-employment restrictions.

Special Note/ Contact for Additional Information

THIS INFORMATION SERVES AS A GUIDE ONLY. For informal assistance in interpreting and applying post-employment restrictions, call your individual Ethics Advisor or the REE Ethics Office. For information regarding procurement-related restrictions, see the Federal Acquisition Regulation, Part 3 - Improper Business Practices and Personnel Conflicts of Interest.

SUGGESTIONS TO AVOID ETHICS PROBLEMS

Action Here are some suggestions to avoid problems with conflict of interest and loss of impartiality.

NUMBER	ACTION
1	Avoid situations where your official actions affect or appear to affect your private interests, financial or non-financial.
2	Avoid making official decisions or taking official action in matters in which you, your spouse, minor child or partner has a financial interest. (This also applies if an organization in which you serve as an officer, director, trustee, partner, employee or prospective employee has a financial interest with the Department.)
3	Do not use official confidential information for personal gain. Do not make an investment that is likely to conflict with your official duties or that is based on confidential information. Be sensitive to the statutory prohibition on the misuse of information involving national security, trade secrets, private individual and Government procurement.
4	Avoid decisions/actions that appear to give another party an unfair advantage.
5	Avoid the appearance of being controlled or influenced by private or outside interests.

Resolutions for Conflict of Interest

Options for the resolution of a conflict of interest include:

- c Disqualifying yourself from taking official action that could affect your personal interest;
- c Requesting a waiver; or
- c Divesting yourself of a conflicting financial interest. (Contact the your Ethics Advisor before volunteering to divest.)

Contact

If you have a conflict of interest, or wish to ask questions regarding conflict of interest or loss of impartiality, call your individual Ethics Advisor or the REE Ethics Office.

TRAINING - ANNUAL

Background	Annual Ethics training for certain employees of the Executive Branch was first required by the Office of Government Ethics (OGE) in 1993. With the implementation of the 1993 mandate, each year agencies are required to provide Ethics training including: new topic discussion; review of Executive Order 12674; supplemental agency regulations; and statutory prohibitions (Title 18 U.S.C.).
Required Attendees	<p>The following employees are required to receive Ethics training each year:</p> <ul style="list-style-type: none">c Public and Confidential Financial Disclosure Filersc Authorized Departmental Officer's Designated Representatives (ADODRs)c Contracting Officers (COs)c Collaborators, Consultants, Panel Members and other Special Government Employeesc <u>ALL</u> Contracting Officer's Representatives (CORs)c <u>ALL</u> Contracting Officer's Technical Representatives (COTRs)c <u>ALL</u> Purchase Card Holders
Employee Responsibility	To assist the Agency with compliance requirements, any employee who is required to receive Annual Ethics training, but not formally asked to do so when training is announced, should immediately contact their individual Ethics Advisor.

TRAINING - ETHICS ORIENTATION

Background Ethics Orientation training for all newly appointed employees of the Executive Branch was first required by the Office of Government Ethics (OGE) in 1993.

Training Material Content Each training package should contain the following material:

- ⌄ Notification memorandum of Ethics Orientation Training;
- ⌄ Standards of Ethical Conduct for Employees of the Executive Branch;
- ⌄ USDA Ethics Rules at a Glance - Highlights (April 1997)
- ⌄ List of Agency Ethics Advisors & Ethics Assistants; and
- ⌄ USDA Departmental Bulletin 735-1 - Employee Responsibilities and Conduct.

Supervisory Responsibility A list of supervisory responsibilities follows.

Number	Responsibility
1	Ensure that all incoming employees receive an Orientation Training package from their servicing personnel office and are given a minimum of one hour to review material within 90 days of the date of their entrance on duty. If training material is not available, contact your Ethics Advisor.
2	Make a copy of the "Standards of Ethical Conduct for Employees of the Executive Branch" readily accessible in each immediate office.
3	During each employee's performance review: <ul style="list-style-type: none">⌄ Confirm that the employee has copies of employee responsibilities and conduct guides; and⌄ Resolve employee responsibility and conduct questions.

Employee Responsibility Each new Agency employee is responsible for taking a minimum of one hour to review an Ethics Orientation package provided by their administrative staff offices. Any questions regarding ethics rights or obligations should be addressed to either the employee's individual Ethics Advisor or the REE Ethics Office. (The names, addresses, and telephone numbers of all Ethics Advisors are included in the training package.)

TRAVEL - ETHICS CONSIDERATIONS FOR THE ACCEPTANCE OF TRAVEL FUNDS FROM NON-FEDERAL SOURCES

Background

Occasionally, an agency is offered funds for reimbursement of official travel and subsistence from a non-Federal source for employee attendance at meetings or similar functions. The General Services Administration and the Office of Government Ethics identified certain conditions under which agencies may accept travel funds. These conditions are further clarified by USDA.

Receipt of travel funds from a **FEDERAL** source is not an ethics issue because generally inter-Governmental activities and exchanges do not pose conflicts for purposes of the ethics rules.

Below are considerations and procedures for the acceptance of travel funds from all **NON-FEDERAL** sources.

General Prohibition

USDA agencies may not accept travel or expenses for travel from prohibited sources, unless travel is conducted in accordance with a cooperative agreement or cooperative exchange.

In those instances where acceptance is possible, **EMPLOYEES ARE PROHIBITED FROM ACCEPTING CASH OR CHECKS MADE PAYABLE TO THE TRAVELER.**

CSREES Prohibition

Acceptance of travel funds from domestic non-Federal sources is not authorized. CSREES employees should only use this guide when considering the acceptance of travel funds from foreign sources.

Definitions

COOPERATIVE AGREEMENT: a relationship between the Agency and eligible Federal or non-Federal entity where:

- c All parties involved have a mutual interest in the agreement's objectives;
- c All parties agree to contribute resources to accomplish the research objectives; and
- c All parties participate in the cooperative work to be accomplished.

DECIDING OFFICIAL: agency employee identified at the highest level possible to ensure adequate analysis of travel fund offer. Examples of Deciding Officials include:

Administrator, Deputy Administrator, Associate Administrator, Staff Director, Division Director, and ARS Designated Area Ethics Advisor.

EMPLOYEE: an appointed officer or employee of USDA including Special Government Employees (Collaborators, Consultants and Panel Members). The term excludes independent contractors.

TRAVEL - ETHICS CONSIDERATIONS FOR THE ACCEPTANCE OF TRAVEL FUNDS FROM NON-FEDERAL SOURCES (Continued)

Definitions (Continued)

MEETING OR SIMILAR FUNCTION: a conference, seminar, speaking engagement, symposium, training course, or similar off site event. **The term excludes meetings or events required to carry out an agency's statutory or regulatory functions, such as: investigations, inspections, audits, site visits, negotiations, or litigation. Also excluded are promotional vendor training or other meetings held for the primary purpose of marketing the non-Federal source's products.**

NON-FEDERAL SOURCE: a person or organization other than the Federal Government. The term includes any individual, private or commercial entity, non-profit organization or association or international or multinational organization (irrespective of whether an agency holds membership in the organization or association), foreign, state, or local government and the government of the District of Columbia.

PAYMENT: funds paid by a non-Federal source for travel, subsistence, and related expenses by check or similar instrument to an agency. **(NOTE: Employees may not personally accept and retain payments. All funds received must immediately be submitted to the Agency.)**

PAYMENT IN KIND: goods, services, or other benefits provided directly to the traveler from a non-Federal source for travel, subsistence, and related expenses in lieu of funds paid to an agency.

PROHIBITED SOURCE: any person/organization (a majority of whose members are):

- c Seeking official action by USDA;
- c Conducting business or seeking to do business with USDA;
- c Conducting activities regulated by USDA; or
- c Having interests that may be substantially affected by performance or nonperformance of the employee's official duties.

Conditions For Acceptance

The Agency must establish the following conditions to assure that funds accepted from non-Federal sources comply with statute and regulation.

Number	Condition
1	Deciding Officials must be appointed at the highest level possible to ensure adequate consideration and review of each offer and acceptance.
2	Documentation of Deciding Official's determination should be evident with each offer and acceptance.

TRAVEL - ETHICS CONSIDERATIONS FOR THE ACCEPTANCE OF TRAVEL FUNDS FROM NON-FEDERAL SOURCES (Continued)

Guidelines For Determining Acceptance

The Deciding Official must make the following four determinations before accepting payment from a non-Federal source.

(CSREES Deciding Officials may use these guidelines for funds offered by foreign sources only. (See Preceding CSREES Prohibition).)

Number	Determination
1	Employee attendance benefits the Agency.
2	Payment is for attendance at a meeting or similar function.
3	Payment is for travel related to the employee's official duties.
4	Payment is from a non-Federal source that is not disqualified on conflict-of-interest grounds. (See Travel - Conflict-of-Interest Analysis on following page.)

TRAVEL - CONFLICT-OF-INTEREST ANALYSIS

Background Conflict-of-interest analysis must be conducted by the Deciding Official prior to the Agency's accepting funds from non-Federal sources regardless of whether or not the non-Federal source is identified as a prohibited source or has established a cooperative agreement.

Prohibition Payment from any non-Federal source shall not be accepted if the Deciding Official determines that acceptance would cause the public, with knowledge of all the facts, to question the integrity of USDA programs or operations.

Acceptance of payment from a prohibited source is also disallowed unless offered in accordance with a cooperative agreement/cooperative exchange.

Considerations for Conflict-of-Interest Analysis The following considerations shall guide the Deciding Official when conducting conflict-of-interest analysis:

Number	Consideration
1	The identity of the non-Federal source;
2	The purpose of the meeting or similar function;
3	The identity of other expected participants;
4	The nature and sensitivity of any matter pending at USDA affecting the interests of the non-Federal source;
5	The significance of the employee's role in any such matter; and
6	The monetary value and character of the travel benefits offered by the non-Federal source.

Special Note The Deciding Official may find that, while acceptance from the non-Federal source is permissible, it is in the interest of the Agency to qualify acceptance of offered payment by, for example, authorizing attendance at only a portion of the event or limiting the type of benefits that may be accepted.

TRAVEL - ACCEPTANCE FOR ACCOMPANYING SPOUSE

Background

When the employee is attending a meeting or similar function in an official capacity, there are occasions where the Agency may accept payment from a non-Federal source for the travel of an accompanying spouse.

Conditions

In order for the Agency to accept payment, the following conditions must be met:

Number	Condition
1	The spouse must travel to the same event as the employee.
2	The spouse must travel pursuant to an official travel authorization.
3	<p>Prior to issuing a travel authorization, the Deciding Official must make the following determinations:</p> <p>a. The presence of the spouse will support agency mission or will substantially assist the employee in carrying out his/her official duties.</p> <p>Acceptable Example: Attendance by a spouse is expected for reasons of international protocol.</p> <p>Unacceptable Examples: Invitation is extended to the spouse.</p> <p>Others in attendance will be accompanied by their spouses.</p> <p>b. The spouse is invited to attend an awards ceremony where the employee will receive an award or honorary degree.</p> <p>c. The spouse will participate in substantive programs related to USDA policies, programs, or operations.</p>

TRAVEL - METHOD OF PAYMENT ACCEPTANCE

Background	The Agency may accept payment from a non-Federal source in the form of a check or similar instrument made payable to the Agency, or it may authorize the employee or spouse to accept payment in kind.
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Permissible In Kind Payments Made Directly to Employee or Spouse	<p>After the Deciding Official approves acceptance of payment, the employee or spouse is authorized to receive the following types of payment in kind on behalf of the Agency. Examples include:</p> <ul style="list-style-type: none">c Dinnerc Airline ticketc Lodgingc Also permitted are checks made payable to the Agency. (Checks made payable to the Agency must be submitted to the appropriate office as soon as practicable.)
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Employee/Spouse	NEITHER AN EMPLOYEE NOR A SPOUSE IS AUTHORIZED TO RECEIVE CASH, A CHECK, OR A SIMILAR INSTRUMENT MADE PAYABLE TO THE TRAVELER.
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Contact	If you have any ethics questions related to the acceptance of travel funds from non-Federal sources, call your Ethics Advisor or call the REE Ethics Office. If you have any travel questions, call the Travel and Relocation Services Branch, Financial Management Division, on 301-504-1270.
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WITNESS TESTIMONY

Background From time to time, employees are subpoenaed or asked to provide **expert or factual** testimony. USDA seeks to assure that its employees are not embroiled in civil matters of no interest to the Government on official time, or in matters of interest to the Government but without its sanction.

Definitions ADMINISTRATIVE PROCEEDING: any proceeding pending before any Federal, state, or local agency and undertaken to issue regulations, orders, licenses, permits, or to adjudicate disputes or controversies.

JUDICIAL PROCEEDING: any case or controversy pending before any Federal, state or local court.

APPEARANCE: providing testimony or documents which arise out of, or relate to, an employee's official duties. An appearance includes an affidavit, deposition, interrogatory, or other required written submission.

General Rule No employee may provide expert or factual testimony or produce documents arising out of, or relating to, Federal employment in judicial or administrative proceedings unless authorized by their Agency Administrator with the concurrence of the USDA Chief, General Counsel.

Exclusions This guide does not apply to appearances as witnesses in judicial or administrative proceedings which are purely personal or do not arise out of or relate to Federal employment. These instances should be handled as personal activities and employees should request leave to honor them.

It also does not apply to subpoenas for agency records, Civil Rights/Equal Employment Opportunity/Program Discrimination Complaints, and work-related testimony to House and Senate Committees.

The following chart identifies the proper office to call in these instances:

For the following:	Then contact:
Agency Records	Information Staff, Freedom of Information and Privacy Acts Office (301) 504-1460 or (301) 504-1655
Civil Rights/Equal Employment Opportunity/Program Discrimination Complaints	ARS: (202) 720-6161 CSREES: (202) 720-4423 ERS: (202) 694-5000 NASS: (202) 720-2707
Work-related testimony to House and Senate Committees	REE Office of Legislative Affairs (202) 720-4465

Contact **Immediately upon receipt of a subpoena, immediately contact the Branch Chief of the Employee Relations Branch on 301-504-1355.**

Any employee expecting personal involvement in civil litigation through testimony or release of official records because of either their inherent expertise or official work, should immediately contact their individual Ethics Advisor or the REE Ethics Office.
